STATE OF MICHIGAN

COURT OF APPEALS

In re AMG, Minor.

UNPUBLISHED
December 8, 2015

No. 327345
Jackson Circuit Court
Family Division
LC No. 14-005277-AD

Before: SAAD, P.J., and STEPHENS and O'BRIEN, JJ.

PER CURIAM.

Respondent appeals as of right the circuit court order terminating his parental rights to the minor child pursuant to § 39 of the Adoption Code, MCL 710.39. We affirm.

Respondent and AMG's mother dated in the spring of 2014. When the mother told respondent that she could be pregnant, respondent purchased pregnancy tests for her. The mother's pregnancy was ultimately confirmed in September 2014, when she and respondent went to a free pregnancy clinic together. Then, respondent's family and the mother's family held a "family meeting," at which they discussed their options for the child. The mother's family wanted to pursue adoption, but respondent and his family sought to raise the child. At the meeting, respondent's parents offered to help with the financial aspects of the pregnancy, but no financial resources were ultimately provided other than respondent's purchase of pre-natal vitamins for the mother. In October 2014, respondent received a letter from Family Service and Children's Aid, the adoption agency, indicating that the mother wanted to make an adoption plan for her baby. Consequently, respondent met with the adoption worker. The adoption worker testified that respondent indicated at the appointment that he might have approved an adoption if the mother spoke with him about it, but, because she had not, he was going to "fight for the baby." Respondent also stated at this appointment that he wanted to have a paternity test. But, he made it clear that if the child was his, he did not want to pursue adoption. Thereafter, AMG was born on November 19, 2014, and was placed with the prospective adoptive parents the following day. Respondent claimed he was not informed of the birth.[1]

[1] At a hearing on January 28, 2015, respondent asserted that he did not know of the birth until January 3, 2015. However, on April 3, 2015, respondent testified that he asked about AMG's health one week after the birth, indicating he knew of the birth shortly after it occurred.

On January 3, 2015, respondent received a notice in the mail regarding the adoption petition and of a hearing to identify AMG's father and determine or terminate his parental rights. At that point, respondent hired an attorney and filed a paternity action. At the hearing on January 23, 2015, respondent moved the trial court to stay the adoption proceeding in light of his pending paternity action. The trial court held an evidentiary hearing on respondent's motion and ultimately denied his request for a stay. The trial court then conducted a hearing regarding respondent's fitness and ability to care for the child, but concluded that it would not be in AMG's best interests.

Respondent first challenges the trial court's denial of his motion to stay the adoption proceeding in favor of his pending paternity action. A trial court's decision whether to adjourn or continue a proceeding is reviewed for an abuse of discretion. *In re King*, 186 Mich App 458, 466; 465 NW2d 1 (1990). We also review a trial court's findings of fact for clear error. *In re Hill*, 221 Mich App 683, 691-692; 562 NW2d 254 (1997). The Adoption Code provides that "[a]n adjournment or continuance of a proceeding . . . shall not be granted without a showing of good cause." MCL 710.25(2). In *In re MKK*, 286 Mich App 546, 555; 781 NW2d 132 (2009), this Court acknowledged that "[a]lthough proceedings under the Adoption Code should, in general, take precedence over proceedings under the Paternity Act, adoption proceedings may be stayed upon a showing of good cause, as determined by the trial court on a case-by-case basis." "Good cause" has been defined as "a legally sufficient or substantial reason." *In re Utrera*, 281 Mich App 1, 11; 761 NW2d 253 (2008) (quotation omitted). Moreover, this Court held in *MKK* that a putative father attempting to assert his parental rights may demonstrate good cause to adjourn an adoption proceeding:

> [T]here may be circumstances in which a putative father makes a showing of good cause to stay adoption proceedings in favor of a paternity action. For example, in cases such as this, where there is no doubt that respondent is the biological father, he has filed a paternity action without delay, and there is no direct evidence that he filed the action simply to thwart the adoption proceedings, there is good cause for the court to stay the adoption proceedings and determine whether the putative father is the legal father, with all the attendant rights and responsibilities of that status. [*MKK*, 286 Mich App at 562.]

The *MKK* Court noted it was "not a case in which a putative father delayed filing a paternity action for many months of years, or until an adoption petition had already been filed." *Id*. at 563. Rather, the putative father in *MKK* filed a notice of intent to claim paternity before the child's birth, and he subsequently filed his paternity action shortly after the child was born and before an adoption petition was filed. *Id.*

Applying the factors set forth in *MKK* to the present case, it is undisputed that respondent is AMG's biological father. However, only this fact supports a finding of good cause. Respondent did not file the paternity action without delay. Rather, he learned, at the latest, that the mother was pregnant in July 2014, and her pregnancy was confirmed in September 2014, at which time she was seven months pregnant. Even though respondent claimed that he was not aware of AMG's birth, he was well aware that the mother was pregnant with his child, yet he never took any steps to claim paternity until he learned of the adoption action. Additionally, even though the mother admitted that she told respondent at some point during her pregnancy

that she would keep the child, respondent was aware that she and her family were considering adoption. Respondent did not file a paternity action until January 2015, approximately two months after AMG was born and after the adoption petition was filed. Thus, we cannot conclude that the trial court clearly erred in weighing this factor—whether the paternity action was filed without delay—against respondent.

Additionally, the record supports the trial court's finding that respondent filed the paternity action simply to thwart the adoption proceeding. In *MKK*, this Court found otherwise because the putative father expended "efforts to provide support and prepare for fatherhood by taking parenting classes and working with social services." *Id*. In this case, respondent expended little effort in between the time he learned of the mother's pregnancy and his filing of the paternity action. The extent of his support was purchasing the pregnancy tests and prenatal vitamins for the mother. Moreover, even though respondent claimed that he was unaware of AMG's birth, he expended little, if any, effort to find out if she was born. He also indicated to the adoption worker that he might have been "okay" with the adoption if the mother talked with him about her adoption plan. Because she did not, he stated he would "fight for the baby." Despite respondent's assertions that he wanted to care for AMG, his actions failed to reflect this desire. Therefore, the trial court did not clearly err in finding that the paternity action was not filed without delay and that it was filed simply to thwart the adoption proceeding. Thus, because respondent did not establish good cause to stay the adoption proceeding, the trial court did not abuse its discretion in denying his motion.

Next, respondent argues that the trial court clearly erred in its evaluation of the best-interest factors listed in MCL 710.22(g) and in its finding that it was not in AMG's best interests for respondent to be awarded custody. We review the trial court's findings with respect to best interests for clear error. *In re BKD*, 246 Mich App 212, 215; 631 NW2d 353 (2001). "A finding is clearly erroneous if this Court is left with a definite and firm conviction that the trial court made a mistake." *Id*.

Here, the trial court addressed factors (*i*) through (*vi*) of MCL 710.22(g) as relevant to the instant case. The first factor, (*i*), considers "[t]he love, affection, and other emotional ties existing between . . . the putative father and the adoptee." MCL 710.22(g)(*i*). The trial court's finding that this factor weighed against respondent is not clearly erroneous. Respondent admitted that he never met AMG and shared no bond with her. Thus, this factor cannot be weighed in his favor. *BKD*, 246 Mich App at 219.

The second and third factors, which consider the respondent's capacity and disposition to parent the child, are unchallenged by respondent and petitioners on appeal. See MCL 710.22(*ii*) and (*iii*). The trial court weighed these factors slightly in favor of respondent.

The fourth factor, (*iv*), considers "[t]he length of time the adoptee has lived in a stable, satisfactory environment and the desirability of maintaining continuity." MCL 710.22(g)(*iv*). AMG was placed with the prospective adoptive family directly after her birth, and she was attached to them. Thus, it was not clearly erroneous for the trial court to find it desirable to maintain this continuity and weigh this factor against respondent. Moreover, respondent challenges expert testimony that was presented with respect to this factor because the expert

witness never met him. However, the trial court was aware of this fact, and we will not disrupt its credibility findings. See *In re HRC*, 286 Mich App 444, 460; 781 NW2d 105 (2009).

The fifth factor, (*v*), considers "[t]he permanence of the family unit of . . . the home of the putative father." MCL 710.22(g)(*v*). The trial court weighed this factor against respondent in light of the fact that he lived with his parents and his current family unit was "anything but permanent." The record supports that respondent intended to move out of his parents' home when he became stable and was financially able to do so. However, he had never lived independently, did not have a budget, and was unaware of the costs involved. Thus, respondent's plans for his home were not yet established, and the trial court did not clearly err in finding that his home did not have permanence. See *In re RFF*, 242 Mich App 188, 202; 617 NW2d 745 (2000); *Ireland v Smith*, 451 Mich 457, 466; 547 NW2d 686 (1996).

The last factor considered by the trial court, (*vi*), considers "[t]he moral fitness of . . . the putative father." MCL 710.22(g)(*vi*). The trial court weighed this factor against respondent given the mother's testimony that respondent once punched a wall after the mother refused his demand for sex. The trial court reasoned that if respondent was so easily angered, it was uncertain how he would react to AMG, given that she was a colicky baby. "[M]orally questionable conduct relevant to one's moral fitness as a parent" includes "offensive behaviors." *Fletcher v Fletcher*, 447 Mich 871, 887 n 6; 526 NW2d 889 (1994). Respondent's actions toward the mother were certainly offensive. Nevertheless, respondent claims that this testimony alone is insufficient to weigh this factor against him, and he asserts that the trial court failed to consider other evidence bearing on his moral fitness. However, the trial court was in the "better position to weigh evidence and evaluate a witness's credibility." *BKD*, 246 Mich App at 220. Because the trial court's findings are supported by the record, we are not left with a definite and firm conviction that a mistake has been made. *Id.* at 215.

To the extent respondent's argument also raises a claim of due process, we find it to be without merit. Respondent argues that factors (*i*) and (*iv*) are "fundamentally unfair" given that he was denied access to the child and did not have the chance to be involved in AMG's life. However, the record does not support that respondent was completely denied access to AMG. He was informed by the adoption worker that he had the right to see the child as the putative father. Also, the prospective adoptive parents reached out to respondent and his family to meet AMG. Respondent took no action to meet or see AMG. Further, he was not denied access to the mother's medical appointments, but, rather, he chose not to go if the mother's mother was also present. Respondent could have "protect[ed] his rights by supporting the mother during her pregnancy or supporting the mother or the child after birth," *BKD*, 246 Mich App at 223, but he did not do so. Thus, his due process argument fails.

Lastly, respondent argues that the trial court should have evaluated an additional consideration under MCL 710.22(g)(*xi*), which permits it to consider "[a]ny other factor considered . . . to be relevant to . . . a putative father's request for custody." Specifically, respondent argues that the trial court should have considered the effect on AMG "if she one day finds out that her biological father, who was physically and mentally fit to care for her, fought for her and was denied the ability to raise her." Contrary to respondent's argument, the trial court was not required to discern and consider any other potentially relevant factor under (*xi*); rather, it was merely permitted to do so. Because four of the six relevant factors considered by

the trial court did not favor respondent, it was not clearly erroneous for the trial court to find that it was not in AMG's best interests to grant respondent custody. Accordingly, we affirm the order terminating respondent's parental rights.

Affirmed.

/s/ Henry William Saad
/s/ Cynthia D. Stephens
/s/ Colleen A. O'Brien